

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael Dever	Team: Team # 1	CCRB Case #: 200900552	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 01/13/2009 9:30 PM	Location of Incident: Lobby of § 87(2)(b)	Precinct: 23	18 Mo. SOL 7/13/2010	EO SOL 7/13/2010	
Date/Time CV Reported Wed, 01/14/2009 1:45 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 01/14/2009 1:45 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Michael Raso	00484	933235	Police Service Area 5

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Pavel Gomez	00417	932158	Police Service Area 5
2. POM Anthony Adorno	26548	936099	Police Service Area 5

Officer(s)	Allegation	Investigator Recommendation
A.SGT Michael Raso	Abuse: Sergeant Michael Raso supervised the stop of § 87(2)(b)	§ 87(2)(b)
B.SGT Michael Raso	Force: Sergeant Michael Raso used physical force against § 87(2)(b)	§ 87(2)(b)
C.SGT Michael Raso	Abuse: Sergeant Michael Raso frisked § 87(2)(b)	§ 87(2)(b)
D.SGT Michael Raso	Abuse: Sergeant Michael Raso searched § 87(2)(b)	§ 87(2)(b)

Synopsis

On January 14, 2009 § 87(2)(b) a resident of § 87(2)(b) in Manhattan, filed a complaint with the CCRB. On January 13, 2009, § 87(2)(b) entered the lobby of his building through an unlocked door and without using a key. Sgt. Michael Raso, PO Pavel Gomez and PO Anthony Adorno, all of whom were assigned to PSA 5, approached § 87(2)(b). Under the authority of Sgt. Raso, the officers asked him if he lived in the building (*allegation A*). § 87(2)(b) replied that he did and provided his identification and one officer started to writing down § 87(2)(b)'s information. § 87(2)(b) alleged that Sgt. Raso grabbed his shoulder and pushed him against the wall (*allegation B*). He further alleged that Sgt. Raso frisked and searched him (*allegations C and D*). PO Adorno issued § 87(2)(b) a summons for § 87(2)(b) and the officers left.

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b)

§ 87(2)(b) is a § 87(2)(b)-old Hispanic male who stands 5'9" tall and weighs about 165 lbs. He lives in § 87(2)(b) at § 87(2)(b) in Manhattan, which has fourteen floors and two stairwells, stairwell A and stairwell B. On January 13, 2009, he was wearing a black jacket, a black sweater, dark blue jeans and black boots. § 87(2)(b) filed his complaint via the call processing system on January 14, 2009 and he was interviewed at the CCRB on January 23, 2009 (encl. 3&4). § 87(2)(g)

On January 13, 2009 at about 9:15 PM, § 87(2)(b) left his building at § 87(2)(b) in Manhattan to go to a store at the corner of East 102nd Street and Third Avenue. As § 87(2)(b) was leaving the building, he saw three uniformed officers, later identified as SGT Raso, PO Gomez and PO Adorno, step out of an unmarked black van and approach the building. § 87(2)(b) opened the door for the officers and they entered the lobby. He did not exchange words with the officers at that time.

§ 87(2)(b) returned to the lobby of his building at about 9:30 PM and waited for the elevator. The elevator was taking longer than normal to arrive because one of the elevators was broken. § 87(2)(b) had been waiting for about two or three minutes when SGT Raso, PO Gomez and PO Adorno came downstairs into the lobby. The building has two stairwells. Two of them came out of one of the stairwells and the third came out of the other.

The officers approached § 87(2)(b) and PO Adorno asked him if he lived in the building. § 87(2)(b) replied that he did and PO Adorno asked him for identification. § 87(2)(b) handed his NYS identification card to PO Adorno, who began writing down information from it. Other people, whom § 87(2)(b) did not know, entered the lobby during that time. The officers asked them for identification, but released them immediately after they produced identification and continued to focus their attention on § 87(2)(b).

§ 87(2)(b) asked PO Adorno why he was writing down information from his identification and repeated that he lived in the building. At that point, the officers appeared to

become annoyed and PO Adorno asked him if he had ever been arrested or served jail time.¹ Before § 87(2)(b) could respond, SGT Raso said that he knew § 87(2)(b) had been arrested before. § 87(2)(b) said that that was irrelevant. In a raised voice, he told the officers that he did not have to answer any questions and that they had no reason to stop him because he was not doing anything wrong. § 87(2)(b) denied ever yelling or cursing at the officers.

At that point, SGT Raso grabbed § 87(2)(b)'s right shoulder and threw him chest first against the wall. § 87(2)(b) loudly asked SGT Raso, "What are you doing?" and why he had thrown him against the wall. Without responding, SGT Raso frisked § 87(2)(b)'s entire body and reached into the pockets of his coat and jeans. SGT Raso asked him if he had any weapons and § 87(2)(b) replied that he did not. He repeated that he lived in the building and loudly asked why SGT Raso was searching him. § 87(2)(b)'s cellphone was in his right outer jacket pocket; his keys and his wallet were in his inside jacket pocket. SGT Raso removed his cellphone from his jacket, but put it back into his jacket immediately afterward. He did not remove any other items from § 87(2)(b)'s pockets.²

After frisking and searching § 87(2)(b) SGT Raso told PO Adorno to write him a summons for disorderly conduct. § 87(2)(b) asked why he being issued a summons, but the officers did not respond and instead told him, "You'd better watch your back." After PO Adorno handed him the summons, § 87(2)(b) went upstairs.

Results of Investigation

Civilian Witnesses

§ 87(2)(b)

§ 87(2)(b) is a § 87(2)(b)-old black male who stands 5'9" tall and weighs approximately 185 lbs. He was interviewed via telephone on April 28, 2009 (encl. 18).

On January 13, 2009, § 87(2)(b) was living with his mother at § 87(2)(b). § 87(2)(b) and his friend, § 87(2)(b) were returning from a store when they entered the lobby through the back door, which § 87(2)(b) stated was always unlocked as a result of people breaking the lock. Once they entered the lobby, three plainclothes officers approached them and asked them if they lived there. § 87(2)(b) replied that he did live there and § 87(2)(b) was with him. One of the officers asked § 87(2)(b) to open his mailbox. § 87(2)(b) used his key to open the mailbox and the officer said, "Ok." The officers then requested their identification and § 87(2)(b) asked, "What's going on?" One of the officers replied that an incident had occurred, so they were taking identification from everyone. They provided their identification and the officer wrote down their information. § 87(2)(b) stated that the officers never made physical contact with him and did not frisk or search him.

§ 87(2)(b) saw the same officers stop other people while he was in the lobby, including a light-skinned Hispanic male who stood about 5'8" tall and appeared to be in his twenties. He recognized the man as someone who lives on the fourth floor of the building. § 87(2)(b) said that he did not see anything occur between the officers and one of the people whom they had stopped, such as pushing or yelling. He added that he never saw the officers frisk or search anyone.

¹ In his intake statement, § 87(2)(b) alleged that an unspecified officer said "shut the fuck up." He did not raise this allegation when interviewed in person.

² In his intake statement, § 87(2)(b) alleged that an unspecified officer threatened to shoot him. He did not raise this allegation when interviewed in person.

§ 87(2)(b) stated that officers frequently ask people in the building for identification. § 87(2)(b) stated that “something is always happening in the lobby,” such as drug activity, fights and arguments. Rapes have also occurred in the building. § 87(2)(b) had no complaints regarding what the officers did and said that they were doing what they were supposed to.

Attempts to Contact § 87(2)(b) & § 87(2)(b)

Based on addresses listed on the Stop Question and Frisk Reports, the undersigned investigator sent letters to § 87(2)(b) and § 87(2)(b) on April 22, 2009 and May 25, 2009. The letter sent to § 87(2)(b) was subsequently returned to sender marked “insufficient address - unable to forward.” The undersigned also checked with Department of Correction and was informed that they were not incarcerated. No further attempts were made to locate additional contact information because, as discussed below, the witnesses’ statements would not have altered the disposition of the allegations.

Officer Testimony

On 1-13-09, SGT Michael Raso was assigned to conditions duties with PO Pavel Gomez and PO Anthony Adorno. They were dressed in uniform and using Department auto # 9570, an unmarked black van.

Sergeant Michael Raso

SGT Raso is a § 87(2)(b)-old white male who stands 5’8” tall and weighs about 195 lbs. He was interviewed at the CCRB on February 20, 2009. SGT Raso did not have any entries in his memo book regarding this incident.

On January 13, 2009, at about 9:20 PM, he, PO Gomez and PO Adorno were in the lobby of § 87(2)(b) when they observed about three men enter the building without using a key. Sometimes the doors of housing buildings do not function properly, so people are able to enter without a key, so non-residents entering the buildings is a common problem. In addition, that building has a high incidence of trespassing and drug sales. SGT Raso added that he has made arrests in the building for those offenses. SGT Raso did not recall the men being loud when they entered and did not recognize any of them. NYC Housing Authority rules state that only residents or guests of residents are permitted to be in the lobby and that loitering in the lobby is prohibited. Signs are posted in the building stating that. Consequently, they approached the men.

PO Gomez asked the men if they lived in the building and requested their identification. Two of the men produced identification verifying that they lived there and were released. SGT Raso did not recall those two men ever saying anything. However, one man, later identified as § 87(2)(b) immediately became agitated. § 87(2)(b) told them that he lived in the building, but refused to produce identification and yelled and cursed at them. SGT Raso did not recall his exact words, but said it was to the effect of, “Fuck you! Fuck this! You’re harassing me!” They advised § 87(2)(b) that he could be arrested for trespassing if he failed to produce identification and issued a disorderly conduct summons if he did not quiet down. § 87(2)(b) did eventually produce his identification, but continued yelling and cursing, becoming progressively louder, which led residents of apartments in the lobby to open their doors.

SGT Raso stated that neither he nor his partners ever made physical contact with § 87(2)(b) and that § 87(2)(b) never became physically aggressive toward them during stop. PO Gomez did most of the speaking to § 87(2)(b). § 87(2)(b) was never asked if he had ever been arrested or served jail time. SGT Raso did not recall whether they asked him if he had a weapon, but said that that is something they routinely ask to people whom they stop. However,

SGT Raso added that he never suspected that § 87(2)(b) possessed a weapon, and that he was never frisked or searched. Since § 87(2)(b) was creating a public disturbance, SGT Raso authorized PO Gomez to issue him a summons for § 87(2)(b). § 87(2)(b) was issued the summons and released. SGT Raso stated that neither he nor his partners ever told § 87(2)(b) “You had better watch your back.”

Stop & Frisk Reports prepared by Police Officer Pavel Gomez

PO Gomez prepared Stop and Frisk Reports for § 87(2)(b) and three other civilians, § 87(2)(b) and § 87(2)(b) (encl. 9-13).

In all four of the reports, PO Gomez indicated that the men were stopped on 1-13-09 at 9:20 PM on suspicion of criminal trespass after entering § 87(2)(b) without using a key. He also indicated that they were neither frisked nor searched and checked off “Time of Day, Day of Week, Season Corresponding to Reports of Criminal Activity” as an additional factor that led to the stop.

In the report regarding § 87(2)(b) under “Demeanor of Person Being Stopped,” PO Gomez wrote “upset” and under “Remarks Made by Person Stopped,” he wrote, “I am tired of these fucking cops, I hate them all.” In the reports for § 87(2)(b), § 87(2)(b) and § 87(2)(b) he wrote “calm.”

PO Pavel Gomez

PO Gomez is a § 87(2)(b)-old Hispanic male who stands 6’1” tall and weighs about 185 lbs. He was interviewed at the CCRB on February 6, 2009 (encl. 14). In PO Gomez’s memo book (encl. 8) he noted that four individuals, including § 87(2)(b) and § 87(2)(b) were stopped at 9:20pm. Four Stop Question and Frisk Reports were prepared and § 87(2)(b) was issued a summons for disorderly conduct.

On the night of January 13, 2009, PO Gomez, SGT Raso and PO Adorno were in the lobby when they observed § 87(2)(b) and several other men enter the building without a key. PO Gomez knew that the lock on the front door was broken because he had been to the building before. PO Gomez, SGT Raso and PO Adorno stopped the men in order to determine if they lived in the building or if they were visiting someone in the building because they entered without using a key. PO Gomez requested their identification and asked them if they lived in the building. Three produced identification and the fourth provided his information to PO Gomez verbally. After determining that all four men lived in the building, PO Gomez began writing Stop and Frisk Reports for them.

At that point, § 87(2)(b) became upset and yelled, “I’m tired of these fucking cops! I hate them all!” He also said, “Fuck this, I hate all of you! I’m tired of living in this building and being harassed!” Without responding, PO Gomez continued writing the Stop and Frisk Reports and recorded § 87(2)(b)’s statements in his report. SGT Raso and PO Adorno did not respond to § 87(2)(b) either. The residents of three apartments in the lobby opened their doors in response to the noise. The other three men were quiet.

PO Gomez stated that he, SGT Raso and PO Adorno never made physical contact with any of the men, and never frisked or searched any of them. He added that § 87(2)(b) never became physically aggressive and that he never felt physically threatened by § 87(2)(b). PO Gomez stated that neither he or, to his knowledge, his partners ever suspected that he was armed. Neither he nor his partners ever pushed § 87(2)(b) or told him, “You’d better watch your back.”

PO Anthony Adorno

PO Adorno is a § 87(2)(b) old Hispanic male who stands 5'5" tall and weighs about 170 lbs. PO Adorno was interviewed at the CCRB on February 22, 2009 (encl. 16). PO Adorno did not have any memo book entries regarding this incident.

PO Adorno's statement was largely consistent with that of PO Gomez. However, PO Adorno stated that he took identification from one of the men, whom he identified as § 87(2)(b) and subsequently prepared a Stop and Frisk Report regarding § 87(2)(b) who was cooperative during the stop.

Criminal Conviction Record of § 87(2)(b)

§ 87(2)(b) has never been convicted of a crime in New York City.

CCRB History

§ 87(2)(b) has not filed any prior civilian complaints. SGT Raso has no substantiated CCRB complaints on his record over five years on the force. § 87(4-b), § 87(2)(g)

Conclusions and Recommendations

Officer Identification

SGT Raso was the highest-ranking officer at the scene, § 87(2)(g) described the officers as a white male and two Hispanic males, and testified that the white officer pushed, frisked, and searched him. SGT Raso is white, and POs Gomez and Adorno are Hispanic. § 87(2)(g)

§ 87(2)(g)

Undisputed Facts

It is undisputed that on January 13, 2009, SGT Raso, PO Adorno and PO Gomez stopped § 87(2)(b) and § 87(2)(b) in the lobby of § 87(2)(b) in Manhattan. The officers took identification from them and PO Gomez subsequently prepared Stop and Frisk Reports.

Disputed Facts

It is disputed if SGT Raso pushed § 87(2)(b) and frisked and searched him.

Assessment of Evidence

There is no dispute that § 87(2)(b) was in the lobby of the building at § 87(2)(b) when he was approached by the officers. Although § 87(2)(b) did not state that he entered the building without a key, the officers all affirmed that he entered the building in this manner. PO Gomez additionally documented this detail in the UF-250 and § 87(2)(b) confirmed that the door was broken and that officers requested the ID of people who entered the building at the same time as § 87(2)(b) due to their entry through the unlocked door.

§ 87(2)(g)

By all accounts, the officers asked § 87(2)(b) whether he lived in the building and asked to see his ID.

§ 87(2)(g)

On the Stop and Frisk Report regarding § 87(2)(b) PO Gomez indicated that § 87(2)(b) was neither frisked nor searched and that no physical force was used against him. In addition, the testimony of the officers concurred with that. § 87(2)(g)

both § 87(2)(b) and the officers and testified that § 87(2)(b) was upset when he was stopped. § 87(2)(g)

A. Abuse of Authority: Sergeant § 87(2)(b) [sic] Raso supervised the questioning of § 87(2)(b)

§ 87(2)(g)

The officers asked him if he lived at the building and requested to see his identification. As SGT Raso testified, Housing Authority rules state that only residents or guests of residents are permitted in the lobby of a public housing building. Barry Kamins' New York Search and Seizure notes that an officer may approach a civilian to request information when there is "some objective credible reason for that interference not necessarily indicative of criminality" (encl. 0).

§ 87(2)(g)

§ 87(2)(g) [Redacted]
[Redacted]

B. Force: Sergeant § 87(2)(b) [sic] Raso used physical force against § 87(2)(b) [Redacted]

C. Abuse of Authority: Sergeant § 87(2)(b) [sic] Raso frisked § 87(2)(b) [Redacted]

D. Abuse of Authority: Sergeant § 87(2)(b) [sic] Raso searched § 87(2)(b) [Redacted]

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: